Commissioner of Central Excise Vs. Garlon Polyfab Industries Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-18-2000

Reported in : (2000)(69)ECC690

Judge : S Kang, a T V.K.

Appellant : Commissioner of Central Excise

Respondent : Garlon Polyfab Industries Ltd.

Judgement :
1. The Revenue filed this Reference application against the Misc. Order No. M/2/99-NB dated 7.1.1999 with the prayer that following question of law be referred to the Hon'ble High Court: Whether the pre-deposit amount of Rs. 6.5 lakhs debited in RG-23C Part-II can be considered as compliance of Tribunal's Stay Order under Section 35F or whether the entire pre-deposit should have been deposited either through RT-6 or debit in PLA account.

2. Learned Counsel appearing on behalf of M/s. Garlon Polyfab Industries Ltd. raised a preliminary objection that the Reference application is not maintainable. He submits that as per Section 35G, the reference application lies against an order passed by the Tribunal under Section 35C of the Central Excise Act and the present impugned order is not passed under Section 35C of the Central Excise Act. He submits that the impugned Misc. Order vide which the Tribunal accepted the compliance made by the appellant to the Stay order and vacated the order of detention issued under Rule 230 of Central Excise Rules by the Supdt. of Central

Excise.

4. The present Reference application is filed against the Misc. Order dated 7.1.1999 which is not an order passed under Section 35C of the Central Excise Act. The appeal is still pending for decision before the Tribunal.

Section 35G - Statement of case to High Court-(1) The [Commissioner of Central Excise] or the other party may within sixty days of the date upon which he is served with notice of an order under Section 35C (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), by application in the prescribed form, accompanied, where the application is made by the other party, by a fee of two hundred rupees, require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court: Provided that the Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period hereinbefore specified, allow it to be presented within a further period not exceeding thirty days.

6. Admittedly, the order in which the Revenue raised a question of law for referring to the Hon'ble High Court is not passed under Section 35C of the Central Excise Act, therefore, the present application is rejected as not maintainable.